

APPLICANT: Walter Winder

BEFORE THE

CO-APPLICANT: Cheryl Polston

ZONING HEARING EXAMINER

REQUEST: A variance to permit a dwelling to encroach into the front and rear yard setbacks

FOR HARFORD COUNTY

BOARD OF APPEALS

HEARING DATE: August 29, 2005

Case No. 5505

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Walter Winder

CO-APPLICANT: Cheryl Polston

LOCATION: South side of Singer Road east of Mountain Road (MD Route 152)
Tax Map: 60 / Grid: 2F / Parcel: 192
First Election District (1st)

ZONING: AG / Agricultural

REQUEST: A variance pursuant to Section 267-34C, Table II, of the Harford County Code to permit a dwelling to encroach into the 40 foot front yard setback (9 foot setback proposed), and to encroach into the 50 foot rear yard setback (9 foot proposed) in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject property is a currently unimproved .78 acre parcel located on Singer Road, east of Maryland Route 152. The parcel is a panhandle shaped lot, with a relatively large driveway/panhandle on Singer Road. The panhandle itself is approximately 50 foot wide and encompasses a significant portion of the overall lot acreage. The subject property had been forested until recent percolation tests.

The parcel is owned by the Applicant Walter Winder. The Co-Applicant Cheryl Polston is his niece. Ms. Polston wishes to move a modular dwelling onto the property. Mr. Winder explained that the extensive septic reserve area required by the Health Department severely limits the size of the remaining buildable area. Mr. Winder submitted, and relies upon, a "Plot Plan" showing the subject property with a proportionately large septic reserve area taking up almost the entire southeastern portion of the property. The remaining unencumbered portion is the panhandle area extending north to Singer Road, and a small portion of the property to the west. Mr. Winder stated that if he were forced to comply with the setback requirements no room would be available for a home of any size. Given that they propose a modular home, Mr. Winder and Ms. Polston have very little flexibility in the size of the home. They must work with the dimensions of the modular.

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Mr. Winder and Ms. Polston have not heard any complaints or expressions of concern from any of their neighbors.

For the Harford County Department of Planning and Zoning testified Dennis Sigler. Mr. Sigler has met with the Applicants, and the Department made an effort to work with them in finding a way to locate a dwelling on the subject property. According to Mr. Sigler and the Staff Report, the subject property is a small lot, with almost a third of the lot being in the panhandle. The need to locate a septic reserve system on the property further limits the remaining available space for a dwelling. Mr. Sigler also stated that the location of the well would be to the west of the property, between the side yard lot line and the dwelling. It would appear that the location of a well in this area would also take a Health Department variance. The Health Department has apparently approved that location for a well.

Mr. Sigler stated there is no location on the property other than that proposed for the proposed dwelling, given the lot's development constraints.

The Staff Report notes that the “. . . location of the septic system and the configuration of the parcel severely restricts the buildable area of the property. . . The dwelling will still be approximately 150 feet from the nearest adjacent dwelling.”

There was no evidence or testimony presented in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is located in a mixed agricultural/residential area of Harford County. While the property has, by a panhandle, approximately 50 feet of frontage on Singer Road, the buildable area of the parcel is actually set back from Singer Road by approximately 150 feet. The property adjoins an old sand and gravel operation, as well as rural residential lots. The nearest dwelling to the proposed site of the modular dwelling to be constructed on the Applicants' property is approximately 150 feet away.

The Applicants' quite obviously suffer from a very unique set of circumstances. They have an obviously non-conforming lot, much of which is taken up in an area used for road access to Singer Road. Approximately one-third of the lot is within this access area. Another one-third will now be taken up by the septic reserve area, as required by the Health Department. The remaining third, or less, of the lot is available for a dwelling to be constructed by the Applicants. They propose a modular unit and accordingly have very little flexibility in the dimensions of that unit. A modular unit can only be placed on the property if the requested side and rear yard variances are granted. Even then, the Health Department will apparently be required to give a variance for the location of the well.

It is, accordingly, found that the Applicants have a property with unique topographical conditions, primarily attributable to its small size and need to construct a fairly significant septic reserve area given its small size. These unusual features limit the ability of the Applicants to construct a home. Indeed, the home proposed could not be constructed without the requested variances.

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It is further found that there would be no adverse impact on any adjoining neighbor if the requested variances were granted. That result of this approval would be the constructive and appropriate use of the subject property by the Applicants and their families. Indeed, there appears to be no other potential use which could be made of the property.

CONCLUSION:

It is, accordingly, recommended that the requested variances be granted, subject to the following:

1. The Applicants shall obtain all necessary permits and inspections for the location of the dwelling, well and septic system.
2. The Applicants shall provide landscaping between the dwelling and the front and rear property lines. A landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval.

Date: September 15, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 13, 2005.